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Yoshiaki Hashimoto

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EXAMINER

ORWIG, KEVIN S

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,173	<b>Applicant(s)</b> HASHIMOTO ET AL.	
	<b>Examiner</b> Kevin S. Orwig	<b>Art Unit</b> 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2, and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The amendments and arguments filed Jan. 27, 2009 are acknowledged and have been fully considered. Claim 3 is cancelled; claims 1, 2, and 4-7 are amended (the text of claims 1 and 2 has been amended, and claims 4-7 are amended via their dependency on claim 1).

The rejection of claims 1, 2, and 5-7 under 35 U.S.C. 102(b) is withdrawn in light of the claim amendments.

The rejection of claim 3 under 35 U.S.C. 103(a) is moot in light of the claim cancellation.

The rejection of claim 4 under 35 U.S.C. 103(a) is maintained as discussed below.

The double patenting rejection over copending U.S. application No. 10/584,739 has been withdrawn due to the claim amendments in that application.

The double patenting rejection over copending U.S. Patent No. 6,924,410 is maintained as no action regarding this rejection has been taken by applicants at this time.

New grounds of rejections for claims 1, 2, and 4-7 are set forth below.

#### ***Claim Rejections - 35 USC § 103 (New Grounds of Rejection)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 1, 2, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over TSURUDA (International Publication No. WO 01/68061; Published Sep. 20, 2001; Reference BA on IDS dated Oct. 5, 2005) as evidenced by TSURUDA (U.S. Patent No. 6,924,410; Issued Aug. 2, 2005).**

1. Since the WO publication is in Japanese, the U.S. patent to Tsuruda, which is the result of the national stage entry of the international application, is relied upon herein as

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an English language equivalent for all rejections based on WO 01/68061. Column and line numbers refer to the '410 patent.

2. Tsuruda discloses an ultraviolet-screening type patch comprising an organic ultraviolet (UV) absorbent and an inorganic UV screening agent (abstract). Tsuruda teaches that the patch of their invention preferably comprises a polyester backing (column 4, lines 38-41; col. 10, lines 15-16) and an adhesive base (i.e. a pressure-sensitive adhesive) (column 5, lines 44-50) on a surface of the backing layer (column 4, lines 34-37). Tsuruda teaches that the adhesive base may contain the nonsteroidal anti-inflammatory drug (NSAID) ketoprofen, (column 2, lines 38-41; column 11, lines 25-43; column 13, lines 3-17, Formulation 4; claim 1). Furthermore, Tsuruda teaches that, as the organic UV absorbent agent, the backing may comprise a benzotriazole derivative such as that represented by the general formula (1) in instant claim 1 (column 2, lines 42-57, especially lines 50-52; claim 6). In particular, Tsuruda teaches benzotriazole species that are chloro substituted at the 5 position (i.e. X in formula (1) of instant claim 1) and having C<sub>1-4</sub> alkyl substituents at the 3' and 5' positions (i.e. R1 and R2 in formula (1) of instant claim 1) (col. 2, lines 50-52).

3. Tsuruda teaches that the backing may contain titanium oxide (column 2, lines 20-33; claim 3) and teaches that the adhesive base may comprise a styrene-isoprene-styrene block copolymer or polyisobutylene (column 7, lines 7-14; claim 9). Tsuruda teaches that there is no need to add a UV absorbent into the base (i.e. adhesives) of their invention (column 11, lines 60-61, and Formulations 1-4 in columns 12 and 13).

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4. Thus, Tsuruda teaches each and every aspect of the instant invention except for the *explicit* teaching that the UV transmittance is not more than 2.0% *under the condition of 3.0 mW/cm<sup>2</sup> of UV intensity*. However, Tsuruda teaches that the light transmittance of their patch is preferably not more than 15% under the condition of a UV intensity being about 0.14 mW/hr/cm<sup>2</sup> (column 4, lines 25-26). Additionally, Tsuruda teaches that the phototransmission rate for their patches may be 2.0% or less (Table 1).

5. While it is not clear that the phototransmission (i.e. light transmittance) taught by Tsuruda is equivalent to the instantly claimed UV transmittance, the two parameters are measured in an essentially identical fashion. For instance, in paragraph [0036] the instant specification states, "As for the calculation of the ultraviolet transmittance, an ultraviolet dose transmitting through the backing is measured under a circumstance in which a direct sunlight irradiates enough to the backing, and the ultraviolet intensity without the above preparation is made 100, calculating each transmittance." By comparison, Tsuruda teaches irradiating a backing with sunlight to observe the UV intensity and then calculating the phototransmission rate of the backing on the basis of the UV intensity (col. 18, lines 19-38). However, Tsuruda discloses a phototransmission rate, and the actual UV transmittance of this light transmission is likely to be lower. Thus, based on the evidence and reasoning presented above, it is the examiner's position that the backings of Tsuruda would have a UV transmittance of not more than 2% measured under the instantly claimed conditions.

6. Since Tsuruda teaches the same compound in the same type of backing layer, the functional limitation is considered inherent because the prior art structure is

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substantially identical to that of the claimed invention. The MPEP states that where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). “When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not.” *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP § 2112.01.

7. Furthermore, even if the UV transmittance of Tsuruda's patches would not inherently meet the limitation of “not more than 2.0% under the condition of 3.0 mW/cm<sup>2</sup> of UV intensity”, in light of Tsuruda's teachings, it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to reduce the UV transmittance of the backing. Tsuruda's teachings make it clear that a lower UV transmittance would better protect UV sensitive medications, as would be appreciated by the ordinary artisan. One would have been motivated to optimize the UV transmittance of the backing by reducing the transmittance as much as possible in order to provide UV protection to the skin or to medication(s) (e.g. ketoprofen) contained in the base of the patch as taught by Tsuruda (abstract; col. 1, lines 5-6 and 59-64; col. 2, lines 34-37; col. 3, lines 45-49; col. 5, lines 6-15). Further, it is well within the skill of the ordinary artisan to optimize the amount of UV absorber(s) used in the backing depending on the drug contained in the patch (e.g. ketoprofen is known to be extremely photolabile). Therefore if an artisan wanted to produce a patch containing an extremely

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UV unstable drug (e.g. ketoprofen) one would have been motivated to reduce the UV transmittance of the backing as much as possible to prevent degradation of the medication as taught by Tsuruda.

A reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976). In light of the forgoing discussion, the examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a). From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, in the absence of evidence to the contrary, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references.

### ***Response to Arguments***

Applicants' arguments have been fully considered but are not persuasive. Applicants argue that Tsuruda fails to teach or suggest the patch as instantly claimed (page 5 of the response). Applicants argue that the phototransmission taught by Tsuruda is different than that instantly claimed (pages 5-6 of the response). Applicants argue that Tsuruda and the present invention are directed to two fundamentally different patches.

Firstly, it is noted that equivalence between the units of  $3.0 \text{ mW/cm}^2$  and  $0.14 \text{ mW/hr/cm}^2$  was not presumed in the prior Office action (see the first sentence of



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paragraph 8 in the previous Office action). In recognition of that fact, the rejection of claim 3 (now cancelled) in the prior Office action was made under obviousness. Likewise, the rejection of instant claims 1, 2, and 5-7 in the current Office action is made under obviousness.

The examiner disagrees that Tsuruda fails to suggest a patch having a UV transmittance of less than 2.0%, even under the UV intensity conditions instantly claimed. As set forth *supra*, Tsuruda is drawn to a patch structure that is identical to that instantly claimed. Tsuruda's patches feature the same backing materials and the same UV absorbing materials as those instantly claimed. The UV transmittance of the backing is determined by the identity of these materials, which Tsuruda discloses. Tsuruda's patches can have a UV transmittance of less than 2.0% under conditions related to those instantly claimed (Table 1). Further, the teachings of Tsuruda would not only motivate the ordinary artisan to reduce the UV transmittance as much as possible when using photosensitive drugs (e.g. such as ketoprofen) in the patches (see the discussion *supra*), but would also lead one to do so.

Applicants have failed to provide proper evidence that distinguishes the instantly claimed invention from that of Tsuruda. Applicants have pointed to Example 6 of Tsuruda and Comparative Example 2 of the instant application as such evidence. Applicants assert that these two backing preparations are "substantially identical," however sufficient similarity between these examples is not apparent. It is noted that Tsuruda does not disclose the weight or thickness of the backing in Example 6 whereas the weight of Comparative Example 2 is said to be 110 g/cm<sup>2</sup> (see Example 1). Thus,

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the difference between the two transmittance values is not necessarily due to any alleged differences between the UV intensities. Rather the alleged differences in the two backings could merely be due to differences in the weights (or the thicknesses) of the polyester material used. It is noted that Tsuruda teaches the use of polyester backing materials in weights from 70-130 g/cm<sup>2</sup> and thicknesses from 0.1-2 mm (col. 10, lines 15-18). The ordinary artisan, in possession of Tsuruda would thus know that adjusting the weight and/or thickness of the backing layer represents another means for reducing the UV transmittance of the backing.

The argument that Tsuruda and the present invention are directed to two fundamentally different patches is not persuasive. As set forth *supra*, the patches of Tsuruda and those instantly claimed are substantially identical. In fact, the structure of the claimed patches *is* identical. It is only in the measurement of a property of the patches that the instant claims differ at all from Tsuruda. Thus, if any modification would need to be made to Tsuruda in order to arrive at the instant patches (and such has not been demonstrated), the modification would be extremely minor.

Applicants argue that the instant invention possesses unexpected results (page 7 of the response).

This argument is not persuasive since no objective data have been presented properly comparing the instant invention to the closest prior art. See MPEP § 716.01(c). Furthermore, Tsuruda teaches all of the alleged "unexpected" features of the invention and provides the motivation and teaching to guide the skilled artisan to prepare a patch having a low UV transmittance. In light of Tsuruda, the features listed on page 7 of the

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response cannot be considered unexpected.

**Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuruda in view of CORDES (WO 97/23227, published Jul. 3, 1997).**

8. The teachings of Tsuruda are presented *supra*. Regarding claim 4, Tsuruda teaches that polyester cloth is preferably used as the backing because it has a good feel and usage sense and that these materials preferably have a mass of 70-130 g/cm<sup>2</sup> (column 10, lines 15-24). It is noted that instant claim 4 recites, "...wherein the weight of the backing is 100 g/m<sup>2</sup>-130 g/m<sup>2</sup>."

9. Since both Tsuruda and the instant application teach essentially the same invention, it is the examiner's position that the teaching of 70-130 g/cm<sup>2</sup> by Tsuruda is a typographical error and that one of ordinary skill in the art would readily have recognized this error, which should be 70-130 g/m<sup>2</sup>. It is noted that similar polyester layers have weights per area on the order of 100 g/m<sup>2</sup> (see obviousness rejection below). In further support of this position is the fact that both Tsuruda and the instant specification teach polyester cloth as the backing material (see Tsuruda column 10, line 15 and paragraph [0034] of the instant specification). Since there is a difference of *four orders of magnitude* between the units of g/cm<sup>2</sup> and g/m<sup>2</sup>, it is reasonable to expect that one of these measurements is in error and that the same backing material for essentially the same invention (a UV-shielding skin patch) would not have a weight per area range this large. Furthermore, example 1 of the instant application states that a polyester woven fabric was used that had a weight of about 110 g/cm<sup>2</sup>. Either this is a

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similar typographical error, or it is evidence that the material used by Tsuruda would meet the limitations of claim 4.

10. Nonetheless, one of ordinary skill in the art would have envisaged the use of a polyester backing having a weight per area of between 100 and 130 g/m<sup>2</sup> since patches using polyester backings of this type were known in the art at the time of the invention. For instance Cordes discloses a transdermal patch having a polyester backing layer with a weight per area of  $96 \pm 5$  g/m<sup>2</sup>. Since Tsuruda teach that a patch having a backing that is too thick or thin is undesirable, the ordinary artisan would have turned to the literature for additional guidance about what weights/thicknesses of material are suitable. Thus, in light of the disclosure of Cordes, it would have been *prima facie* obvious for the ordinary artisan to produce the patch taught by Tsuruda with a polyester backing of about 100 g/m<sup>2</sup> as taught by Cordes and suggested by Tsuruda, rendering claim 4 obvious.

### ***Response to Arguments***

Applicants' arguments have been fully considered but are not persuasive. Applicants argue that the alleged deficiencies of Tsuruda fail obviate the rejection of claim 4 (page 8 of the response). Applicants argue that Cordes does not disclose a polyester backing layer with a weight in the instantly claimed range (page 8 of the response).

The alleged deficiencies of Tsuruda were addressed *supra*. The examiner points out that the disclosure of Tsuruda would have led one of ordinary skill in the art to use a backing layer having a weight of 100 g/m<sup>2</sup>-130 g/m<sup>2</sup> as discussed *supra* and in the

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previous Office action (see paragraph 11 of the previous Office action). The examiner pointed out an apparent error in Tsuruda regarding the disclosed weight of the backing material. As previously noted, a similar error appears in the instant specification (Example 1). It is noted that applicants have not addressed this issue. Applicants' silence on this issue, appears to indicate that the disclosure of Tsuruda of the units  $\text{g/cm}^2$  (and the similar disclosure of  $\text{g/cm}^2$  in Example 1 of the instant application) is indeed an error. Thus, one of skill in the art would have recognized this error and would only have needed Tsuruda, which teaches 70-130  $\text{g/cm}^2$  (*recognized by the skilled artisan to mean 70-130  $\text{g/m}^2$* ) as the weight of the backing layer to envisage the instantly claimed backing weight.

Cordes was relied upon as evidence that similar polyester backing materials have weights of 100-130  $\text{g/m}^2$  and that such would have been known by the ordinary artisan. Applicants have not addressed the aforementioned error. Nonetheless, in contrast to applicant's assertion to the contrary, Cordes does teach a backing layer that reads on instant claim 4. Cordes teaches a polyester film coated with an adhesive mixture weighing  $96 \pm 5\%$  as an intermediate liner. Such a liner can be construed as a backing layer. It is noted that the term "backing" has not been given a special meaning in the instant specification. Thus, the term has been interpreted broadly. There is nothing in the instant claims that requires that the backing consist *only* of polyester. Further, even if such language were present in the claim Cordes is still sufficient to indicate to the ordinary artisan that typical polyester backing layers are in the range of about 100  $\text{g/m}^2$ , not  $\text{g/cm}^2$  (i.e. the error in Tsuruda), which is all that one would need to

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know in order to be guided to the instantly claimed weight range *per the teachings of Tsuruda*.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

### **U.S. Patent No. 6,924,410**

Claims 1, 2, and 4-7 are non-provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6, and 9 of U.S. Patent No. 6,924,410. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the '410 claims anticipates or renders obvious that of the instant claims. While most elements of instant claim 1 are anticipated by the '410 patent, the overall scope of the claims is not anticipated because the claims of the '410 patent do not recite a polyester backing, do not recite a specific benzotriazole derivative, and do not recite the instantly claimed UV transmittance measurement conditions. However, these elements, and thus the entire scope of the instant claims is rendered obvious since, polyester backings are commonly used in such adhesive patches (the preferred backing in the '410 patent). Furthermore,

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'410 claim 6 recites benzotriazole derivatives, which are taught in the '410 patent. The instantly claimed UV transmittance values are either inherent to, or obvious variations of the '410 patent as discussed above.

Claims 1, 2, and 4-7 are directed to an invention not patentably distinct from claims 1-3, 6, and 9 of commonly assigned 6,924,410. Specifically, see above.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned 6,924,410, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

### ***Summary/Conclusion***

Claims 1, 2, and 4-7 are rejected; claim 3 is cancelled.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin S. Orwig whose telephone number is (571)270-5869. The examiner can normally be reached Monday-Friday 7:00 am-4:00 pm (with alternate Fridays off). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached Monday-Friday 8:00 am-5:00 pm at (571)272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a



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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KSO

/David J Blanchard/  
Primary Examiner, Art Unit 1643